Statement

Women, and especially marginalized women, continue to be sterilized without their consent around the world. Forced sterilization violates numerous human rights and implicates States' obligations to act with due diligence to prevent, protect, and remedy acts of gender-based violence. This practice inflicts terrible trauma on women in many countries, including Canada, where Indigenous women continue to be forcibly sterilized in a discriminatory manner in public hospitals. Canada, like other States, has yet to implement reforms that could redress these harms and protect future generations of women and girls.

When women fear using public health services, are discriminated against in public hospitals, or experience human rights violations at the hands of public doctors, their access to necessary healthcare is limited and their health, including sexual and reproductive health, suffers. In addition to causing individual trauma, this violation perpetuates gender inequality. States' human rights obligations are clear; agreeing on steps for fulfilling these obligations can help guide States to action.

Forced sterilization of marginalized women is a global human rights problem requiring State action.

In the words of the United Nations Special Rapporteur on torture, "Targeting ethnic and racial minorities, women from marginalized communities and women with disabilities for involuntary sterilization because of discriminatory notions that they are 'unfit' to bear children is an increasingly global problem. Forced sterilization is an act of violence, a form of social control, and a violation of the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment." Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, UN Doc. A/HRC/22/53, 1 February 2013, para. 48.

Human rights bodies and other stakeholders have recognized, for at least two decades, that sterilization performed without a person's full, free, and informed consent violates various human rights. See, e.g., I/A Court H.R., I.V. v. Bolivia, Judgment of 30 November 2016; World Health Organization et al., Eliminating Forced, Coercive and Otherwise Involuntary Sterilization: An Interagency Statement (2014); ECtHR, V.C. v. Slovakia, Judgment of 8 November 2011, para. 108; Committee on the Elimination of Discrimination against Women, General Recommendation No. 24: Article 12 of the Convention (Women and Health), para. 20. When carried out in a public hospital, this violation is directly attributable to the State. See, e.g., I.V. v. Bolivia, Judgment of 30 November 2016, para. 203.

Additionally, States' general obligations to respect, protect, and fulfil human rights mandate that governments take steps to ensure women's reproductive and sexual health and rights more broadly. See, e.g., General Recommendation No. 24: Article 12 of the Convention (Women and Health). States are responsible for regulating and monitoring private healthcare providers and, for ensuring accountability and redress for human rights violations committed in the healthcare context. See, e.g., Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, United Nations Doc. A/HRC/22/53, at paras. 24–25.

Relatedly, international law has increasingly mandated that States act with due diligence to prevent acts of sexual or gender-based violence (including forced sterilization), to protect victims by appropriately responding to these acts of violence, and to provide victims with an adequate remedy. See, e.g., Committee on the Elimination of Discrimination Against Women, General Recommendation No. 35: Gender-based violence against women, updating general recommendation No. 19,

United Nations Doc. CEDAW/C/GC/35, 18 July 2017, para. 2; Integration of the Human Rights of Women and the Gender Perspective: Violence against Women, Report of the Special Rapporteur on violence against women, its cases and consequences, Ms. Radhika Coomaraswamy, United Nations Doc. E/CN.4/1999/68, 10 March 1999, para. 6. A State becomes internationally responsible for rights violations by private actors, including instances of forced sterilization, when it fails to meet the due diligence standard.

Moreover, when a person is subjected to forced sterilization because of her race or ethnicity, or denied equal protection or access to a remedy, her rights to equality, non-discrimination, and equal protection are also implicated. See, e.g., Committee on the Elimination of Racial Discrimination, Concluding observations on the combined eleventh and twelfth periodic reports of Slovakia, United Nations Doc. CERD/C/SVK /CO/11-12, 12 January 2018, para. 23.

In this regard, in its 2013 Agreed Conclusions, the Commission on the Status of Women called on governments to "[c]ondemn and take action to prevent violence against women and girls in health-care settings, including...forced medical procedures, or those conducted without informed consent, and which may be irreversible, such as ... forced sterilization." The 2013 Agreed Conclusions went on to highlight the necessity of such action "especially for particularly vulnerable and disadvantaged women and girls, such as ... indigenous and Afro-descendent women and girls." Subsequent agreed conclusions have also emphasized the necessity of State action to ensure "universal access to sexual and reproductive health-care services" and related information "free of coercion, discrimination and violence." See, e.g., Commission on the Status of Women, CSW62 Agreed Conclusions (2018), para. 46(uu).

Forced sterilization of Indigenous women in Canada demonstrates the need for greater governmental attention.

Forced sterilization of Indigenous women in Canada, previously authorized by official policy, continues to this day as an unlawful, but tacitly permitted, practice. Women belonging to diverse Indigenous communities in Canada have been subjected to forced sterilization in the country's public health care system, typically after being admitted to public hospitals to give birth.

The full extent of this practice has not been documented, although dozens of women have voluntarily come forward since 2015. Some of their stories have been publicized in news media reports. The one known governmental review of recent allegations, conducted at the local level in the province of Saskatchewan, revealed "pervasive structural discrimination and racism" and a failure to respect the principle of informed consent in the public health care system. Recent victims of this practice have also come forward in other regions and provinces, including Ontario, Alberta, and Manitoba.

However, authorities have not taken steps to understand the full scale of this pattern of violations, and have failed to investigate, punish, or provide redress for known instances of forced sterilization. In Saskatchewan, the publicly-run health region has offered an apology but has not undertaken the reforms necessary to understand how many women have been affected nor to ensure that more women do not suffer the same violation. At the federal level, while Canada has responsibility for Indigenous healthcare, but has taken no action to review or investigate, to prevent this practice from continuing, to protect known victims, or to provide reparations.

Gaps in protection are clear in the training of healthcare professionals, public hospitals' policies and practices with regard to informed consent, the oversight of healthcare facilities and practitioners, the collection of relevant data, statute-of-

limitations restrictions on victims' ability to pursue civil liability, and the failure to criminalize forced sterilization. The lack of protection is perhaps most obvious in the fact that no person has been held civilly or criminally liable for performing a forced sterilization on an Indigenous woman and that no victim has been compensated.

Recommendations

In view of the pervasive and persistent occurrence of forced sterilization, we recommend governments:

- Codify the duty to obtain informed consent to medical procedures;
- Investigate reported instances of forced sterilization with a view to the prosecution and punishment of those responsible and prevention of this practice in future;
- Provide reparations to identified victims, including monetary compensation, mental health treatment, and healthcare services necessary to allow them to become pregnant and carry a child, if so desired;
- Provide or otherwise require training for health professionals on cultural competency and informed consent and screen health professionals for discriminatory biases;
- Criminalize forced sterilization;
- Explicitly exempt forced sterilization from short statutes of limitations on civil claims;
- Ensure that healthcare authorities and medical professional licensing entities receive, investigate, and appropriately address reports of failure to ensure informed consent to medical procedures;
- Issue guidance to healthcare providers regarding sterilization procedures, including that such procedures are never urgent in nature, that consent for such procedures must never be sought while a woman is in labour or delivery or immediately postpartum, and that the risks, side effects, and permanency of tubal ligation must be clearly communicated and understood;
- Ensure broad access to information, such as through brochures, on reproductive and sexual health and rights for patients, and specifically on sterilization procedures; and,
- Collect and make publicly available data on sterilization, including data disaggregated by patients' race or ethnicity.